84-552

Office-Supreme Court, U.S.
FILED
OCT 2 1984
ALEXANDER L. STEVAS,
CLERK

No. 84-

IN THE SUPREME COURT OF THE
UNITED STATES

October Term 1984

JOSEPH H. STANZIANI, et al.,

Petitioners

v.

KASEEM COLEMAN, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

I. Is a pretrial order by a federal district court refusing to abstain appealable under the collateral order doctrine when the case is against state judicial officers (including a class of all present and future state juvenile court judges, masters, and probation officers) and challenges the constitutionality of state proceedings conducted by the judicial officers?

II. Did the district court err as a matter of law in refusing to abstain from deciding this case brought against a class of state judicial officers in which the constitutionality of state juvenile court proceedings governing juvenile

detention decisions are challenged when the plaintiffs failed to avail themselves of adequate opportunities to raise their Constitutional claims in the state proceedings?

LIST OF ALL PARTIES

The petitioners before this Court were all the defendants in the district court and the appellants in the circuit court. They are: Joseph H. Stanziani and Lawrence A. Brown, who are Judges of the Montgomery County, Pennsylvania, Court of Common Pleas, Juvenile Divisicn, who have been sued on their own behalf and on behalf of all other Pennsylvania juvenile court judges; Anthony Guarna, who is the Chief Juvenile Probation Officer, Montgomery County, Pennsylvania, who has been sued on his own behalf and on behalf of all other Pennsylvania juvenile probation officers; Montgomery County, Pennsylvania, Court of Common Pleas, Juvenile Division; and Montgomery County, Pennsylvania.

The respondents were plaintiffs in the district court and appellees in

the circuit court. They are: Kaseem Coleman, by his mother, Delores Lees; Aaron Mattox, by his mother, Doris Mattox; Lawrence Lee Wiggins and Freddie Lee Wiggins, by their mother, Barbara Wiggins, all of whom brought the action, on their own behalf and on behalf of all others Pennsylvania juveniles who are or will be detained. At the time the complaint and/or amended complaints were filed each of the respondents was a minor.

TABLE OF CONTENTS

QUESTIONS PRESENTED..... i

LIST OF ALL PARTIES..... iii

TABLE OF CITATIONS..... vi

OPINIONS BELOW..... 2

STATEMENT OF JURISDICTION..... 3

STATUTES INVOLVED..... 3

STATEMENT..... 4

REASONS FOR GRANTING THE WRIT..... 9

CONCLUSION..... 39

APPENDIX:

Opinion, Court of Appeals..... 1a

Opinion, District Court..... 12a

Appendix to opinion (containing statutes involved)..... 54a

Order, District Court..... 59a

Appendix of Statutes Involved... 60a

Judgment, Court of Appeals..... 63a

TABLE OF CITATIONS

Cases	Page
Abney v. United States, 431, U.S. 641 (1977).....	26
Allen v. McCurry, 449 U.S. 90 (1980).....	22
Burford v. Sun Oil Co., 319 U.S. 315 (1943).....	9,31,34
Central States, Southeast & Southwest Areas Health & Welfare Fund v. Old Security Life Insurance Co., 600 F.2d 671 (7th Cir. 1979).....	24
Cheyney State College Faculty v Hufstedler, 703 F.2d 732 (3d Cir. 1983).....	8
Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949).....	22
Colorado River Water Conservation District v. United States, 424 U.S. 800 (1979).....	31,34
Fair Assessment in Real Estate v. McNary, 454 U.S. 100 (1981)...	14,15, 18,19, 30,36
Gerstein v. Pugh, 420 U.S. 103 (1975).....	29
Helstoski v. Meanor, 442 U.S. 500 (1979).....	26

Cases	Page
Huffman v. Pursue, 420 U.S. 492 (1975).....	14,15,16 22,32
Juidice v. Vail, 430 U.S. 327 (1977).....	16,29,33
Matthews v. Rodgers, 284 U.S. 521 (1932).....	14
Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423 (1982).....	13,14
Moore v. Sims, 442 U.S. 415 (1979).....	13,14,17 31,32,35
Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1 (1983).....	8
Nixon v. Fitzgerald, 457 U.S. 731 (1982).....	12,23,26 28,31
O'Shea v. Littleton, 414 U.S. 488 (1974).....	29,37
Pennsylvania v. Williams, 294 U.S. 176 (1935).....	9
Pulliam v. Allen, No. 82-1432 (U.S. May 14, 1984).....	11
Railroad Commission of Texas v. Pullman Co., 312 U.S. 496 (1941).....	9,31

Cases	Page
Rodgers v. United States Steel Corp., 508 F.2d 152 (3d Cir.) cert denied, 423 U.S. 832 (1975).....	8
Samuels v. Mackell, 401 U.S. 66 (1971).....	27
Schall v. Martin, No. 82-1248 & 82-1278 (U.S., June 4, 1984)..	17,33, 35
Swift & Co. Packers v. Companiana Columbia DelCaribe, 339 U.S. 684 (1950).....	25
Trainor v. Hernandez, 431 U.S. 434 (1977).....	13,14, 15,17
Younger v. Harris, 401 U.S. 37 (1971).....	9,21,31 32

Statutes

28 U.S.C. §	1254(1).....	3
	1257.....	22
	1291.....	3
	1331(a),1343(3)&(4).	4
42 U.S.C. §	1983.....	3,4,15 29,30
42 Pa. Cons. Stat. Ann. §§	6301-6365 (Purdon 1982).....	4
	6301(b).....	3,34
	6325.....	3,4
	6331.....	3,6
	6332(a).....	3,6
	6335.....	3,4
	6341.....	3,4

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PETITION FOR A WRIT OF CERTIORARI
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Petitioners, on behalf of themselves, and all present and future Pennsylvania juvenile court judges, masters, and probation officers, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit issued in docket # 83-1730.[1]

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[1]Docket # 83-1730 was an appeal from the district court's refusal to abstain. Petitioners are not seeking review of the consolidated case of 83-3539--their Alternative Petition for Writ of Mandamus or Prohibition.

OPINIONS BELOW

The opinion of the Third Circuit (1a-11a) is reported at 735 F.2d 118. The opinion of the district court (12a-59a) is reported at 570 F.Supp. 679.

STATEMENT OF JURISDICTION

The order of the court of appeals (65a) was entered on June 4, 1984. On August 27, 1984, Justice Brennan extended the time within which to file a petition for a writ of certiorari to October 2, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTES INVOLVED

The relevant portions of statutes involved are set out verbatim in the appendix to this petition. They are: 42 U.S.C. §1983 (60a); 28 U.S.C. §1291 (60a); 42 Pa. Cons. Stat. Ann. §6325, 6335 and 6341 (Purdon 1982) (54a, 55a, and 56a-58a, respectively, which were included in an appendix to the district court opinion); and 42 Pa. Cons. Stat. Ann.§ 6301(b) (61a), §6331 (61a-62a), and §6332(a) (Purdon 1982) (62a).

STATEMENT

This is a civil rights class action brought under 42 U.S.C. §1983 in federal district court[2] against all present and future juvenile court judges, masters, and probation officers in the entire Commonwealth of Pennsylvania [hereinafter judicial officers].[3] The suit challenges, both facially and in its application, the constitutionality of some provisions of Pennsylvania's Juvenile Act[4] which direct the conduct of judicial officers. (12a-13a) The challenged provisions authorize detention of juveniles if necessary to protect the

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[2]Jurisdiction of the district court was based on 28 U.S.C. §§1331(a), 1343(3) and (4).

[3]Montgomery County, Pennsylvania is also named in this suit.

[4]42 Pa. Cons. Stat. Ann. §§6301-6365 (Purdon 1982).

juveniles, others, or property or to prevent the juveniles from absconding.[5]

The plaintiffs are four named juveniles who brought the action on behalf of all present and future juveniles who are or will be detained. (12a, 14a). The juveniles sought an injunction and declaratory judgment. (4a). Additionally, two named juveniles sought monetary damages against the "non-judicial" county defendants. (34a).

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[5]42 Pa. Cons. Stat. Ann. §§6325, 6335, 6341 (Purdon 1982). (54a, 54a-55a, 56a-58a).

In a 117 paragraph, 39 page complaint, the juveniles challenged these provisions on numerous grounds: due process, including assertions that such detentions are unconstitutional infliction of punishment, that the statute is overbroad and vague, that its enforcement is arbitrary and capricious and that it fails to set forth a burden of proof; Sixth Amendment; Eighth Amendment; and Equal Protection.

Among the procedural safeguards of the Juvenile Act, are requirements that before any detention can occur, an "officer of the court" (juvenile probation officer) investigates whether detention is necessary[6] and that a judicial hearing on the need for the detention be held within 72 hours of initial detention.[7] In the complaint, the named juveniles admitted that each had been afforded these rights.[8] The complaint did not allege that any named juvenile raised his federal constitutional challenges in his state proceedings nor that any attempted to challenge his

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[6]42 Pa. Cons. Stat. Ann. §6331 (Purdon 1982). (61a-62a)

[7]42 Pa. Cons. Stat. Ann. §6332(a) (Purdon 1982). (62a)

[8]Detention hearings were given to two within 24 hours and to the other two within 48 hours of their arrests.

detention through any other state mechanism such as an appeal of the detention order or a petitio for a writ of habeas corpus.

The defendants filed a motion for judgment on the pleadings urging the district court to dismiss on several grounds including abstention. (13a-14a). By order and opinion dated September 14, 1983, the district court rejected each of the asserted grounds for dismissal and denied the motion. (12a-58a). On September 26, 1983, defendants filed a notice of appeal, appealing only from the district court's refusal to abstain. (6a). The circuit court's jurisdiction was invoked under the collateral order doctrine. (8a). The juveniles challenged the appealability of the district court's order through a motion to dismiss the appeal. (6a). The Third Circuit granted that motion holding that

refusal to abstain is not an appealable order.[9] (10a).

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[9]Although defendants believed the order to be appealable, they filed an alternative petition for a writ of prohibition or mandamus requesting the circuit court to reach the merits of the abstention questions even in the event it concluded the district court's order was not appealable. Such practice had been employed in several cases in the Third Circuit. See e.g., Cheyney State College Faculty v. Hufstedler, 703 F.2d 732, 733, 736 (3d Cir. 1983); Rodgers v. United States Steel Corp., 508 F.2d 152, 159 (3d Cir.), cert. denied, 423 U.S. 832 (1975); see also Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1 (1983). The court denied the petition. (11a).

REASONS FOR GRANTING THE WRIT

This case presents questions of great importance to the continuing vitality of federalism and comity, as applied to the judicial branch of states' governments. This Court has long recognized the importance of federalism and comity and has formalized those concepts in the abstention doctrines.[10] The degree to which those concepts are meaningful, however, depends, in large part, on when a final determination of the applicability of abstention is made.

The Court of Appeals held that a pretrial refusal to abstain is not immediately appealable. The effect of this decision, coupled with the district

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[10] See Younger v. Harris, 401 U.S. 37 (1971); Burford v. Sun Oil Co., 319 U.S. 315 (1943); Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941); see also Pennsylvania v. Williams, 294 U.S. 176 (1935).

court's erroneous refusal to abstain is that the state judiciary must participate in burdensome discovery, be subjected to a trial in federal court, and, perhaps, be required to implement and enforce an injunction before an erroneous refusal to abstain can be overturned. This result renders the states' rights, which are protected by the concepts of comity and federalism, abstract doctrines with little practical value, particularly as applied to the states' judiciaries. Many of the evils which the abstention doctrines seek to avoid will have occurred and, conversely, many of the benefits will have been lost irretrievably if the appeal must wait until the trial has been concluded. This Court should grant this petition to reaffirm the concepts of federalism and comity and restore their vigor.

1a. The importance of abstention in cases against states' judiciaries was highlighted by this Court's decision in Pulliam v. Allen, No. 82-1432 (U.S. May 14, 1984); and, that case demonstrates how vital are immediate appeals of pretrial denials of abstention. In Pulliam, this Court held that judicial immunity does not protect individuals acting in a state judicial capacity from injunctive relief and attorneys' fees because, in part, principles of federalism and comity provide adequate protection. The Court stated: "We reaffirm the validity of [comity and federalism] principles and the need for restraint by federal courts called on to enjoin the actions of state judicial officers. We simply see no need to reinterpret the principles now as stemming from the doctrine of judicial immunity." Slip op. at 16.

Thus, the only protection afforded state judicial officers against the burden, cost, and diversion from duty occasioned by defending often complex and time-consuming civil rights litigation, such as the case at bar, is abstention. Yet, if the protection of abstention cannot be obtained until after a trial, it is, indeed, small protection.

The protection from federal intrusion that would have been afforded under judicial immunity would have included the right to appeal from a pretrial decision denying immunity. Cf. Nixon v. Fitzgerald, 457 U.S. 731 (1982) (denial of absolute presidential immunity). The alternative protection recognized by the Court--abstension--is adequate only if pretrial refusals to abstain are appealable.

b. Similarly, many of the important national policies embodied in abstention would be thwarted if an erroneous refusal to abstain could be corrected only after trial. These polices, although articulated somewhat differently in various cases, include: (1) respect for the state's role in developing and enforcing its important policies free from unwarranted federal interference;[11] (2) recognition that our federal government is best served by state institutions performing their separate functions in their separate and diverse ways;[12] (3) acknowledgment that state courts are competent to safeguard

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[11] Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423, 431 (1982); Moore v. Sims, 442 U.S. 415, 429 (1979); Trainor v. Hernandez, 431 U.S. 434, 441, 443-44 (1977).

[12] Middlesex, 457 U.S., at 431.

federal constitutional rights;[13] (4) recognition that state courts should, at the least, be given the first opportunity to address constitutional attacks on state policy implementation;[14] and, (5) recognition that by doing so, a state is enabled on its own to correct any problems with its practices.[15] In short, comity and federalism encompass "'[t]he scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts.'" Fair Assessment in Real Estate v. McNary, 454 U.S. 100, 116 (1981), quoting, Matthews v. Rodgers, 284 U.S. 521, 525 (1932). This national

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[13]Middlesex, 457 U.S., at 431; Moore, 442 U.S., at 430 Trainor, 431 U.S., at 442-43; Huffman v. Pursue, 420 U.S. 592, 604, 611 (1975).

[14]Moore, 442 U.S., at 427, 429-30; Trainor, 431 U.S., at 445.

[15]Moore, 442 U.S., at 429-30.

policy of non-intervention is strongest when the state judicial system is involved. See Trainor v. Hernandez, 431 U.S. 434, 441 (1977); Huffman v. Pursue, 420 U.S. 492, 603-04 (1975).

As is apparent from the very articulation of these policies, the federal intrusion which abstention seeks to avoid is not limited to the intrusion resulting from a federal court order, but also includes the intrusion resulting from maintenance of the federal suit itself. See particularly, Trainor, 431 U.S., at 445; see also Fair Assessment in Real Estate Association v. McNary, 454 U.S. 100, 114 (1981) (comity prohibited federal court from entertaining a section 1983 damages claim challenging tax assessments in which Court noted "the very maintenance of the suit" is intrusive.)

Of the policies identified above, the one most obviously thwarted by the maintenance of this federal suit is the acknowledgment that state courts are competent to safeguard federal constitutional rights. Trying the state judiciary in federal court, rather than requiring juveniles to raise constitutional claims in the state proceedings they challenge, "'can readily be interpreted as reflecting negatively upon the state court's ability to enforce constitutional principles.'" Juidice v. Vail, 430 U.S. 327, 336 (1977), quoting, Huffman v. Pursue, 420 U.S. 592, 604 (1975). But just as obviously, if state judicial defendants can appeal a refusal to abstain only after the federal court issues its decision on the merits, the federal court--not the state court--will have first addressed the constitutional attacks on the state system and the state

will have been deprived of the opportunity to take corrective action, if necessary, on its own. See Trainor, 431 U.S., at 445. In short, "displacement of state courts by those of the National Government," which is a "threat to our federal system," will have occurred. Moore v. Sims, 442 U.S. 415, 423 (1979).

The very pendency of the federal lawsuit also interferes with the state's development and enforcement of its important policies. In this case the important policies concern operation of the juvenile justice system--an area in which states have a unique role. See Schall v. Martin, Nos. 82-1248 & 82-1278, slip op. at 9, 11 (U.S. June 4, 1984); Moore, 442 U.S., at 435. This case has called into doubt the validity of the juvenile detention decision-making process. Juvenile judges, masters, and probation officers must make

detention decisions on a daily basis. But, they do so knowing that there is a possibility that their actions later may be deemed to have been unconstitutional. Thus, the very pendency of the federal suit is likely to have "a chilling effect" even on those judicial officers who are implementing the statute in good faith. See Fair Assessment, 454 U.S., at 115. Avoidance of this chilling effect is one purpose of abstention. See ibid.

The conduct of the trial also would be intrusive. At trial, state court judges would testify before the federal court judge, or otherwise introduce evidence, regarding what thought processes were and are used in making detention decisions. The state judges would be justifying those decisions to the federal court. In effect, the federal court would be a source of

appellate review for state court detention decisions, in contravention of abstention principles. See id, 454 U.S., at 114. This federal intrusion is particularly offensive when, as in this case, the state defendants "are not one or two isolated" officials, but the entire state juvenile court judiciary. Ibid.

Additionally, if state judicial officers must undergo a trial before an erroneous refusal to abstain can be reversed, the unnecessary costs to the public will be high. There will be needless expenditure of time by state judicial officials which not only will be expensive but also will distract the officials from performing their judicial duties. For instance, the plaintiffs in this case have already requested that each of the juvenile court judges and probation officers throughout the state

(numbering in excess of 700) respond to numerous interrogatories. And, of course, the judicial officers would have to expend considerable time in preparation of their own defense. Because the juveniles challenge the constitutionality of the detention provisions as applied, a thorough defense will require an explanation of the application of the statute in each of the State's 59 judicial districts.

The harm resulting from this improper federal intrusion cannot be cured by a post-trial reversal of a refusal to abstain. The dignity and integrity of, and public trust in, the state judicial system is necessarily eroded by a federal court trial of state judicial officers. If after trial the court of appeals rules that the district court should have abstained, the lost dignity, integrity, and public confidence

cannot be fully restored. Nor can the disrespect of the state system shown by maintenance of the federal suit be eradicated. Such results do not foster "Our Federalism". Younger v. Harris, 401 U.S. 37, 45 (1971).

If the refusal to abstain were appealable (and reversed) prior to trial, the federal intrusion and the problems it creates would not exist. The juveniles would be required to raise their constitutional claims in the proceedings they challenge. State judicial officers would not be defendants; rather, state judges would be adjudicators of the constitutional claims and could make their detention decisions based on their determination of the federal constitutional claims. If the juveniles prevailed, federal interference in this state issue would be avoided. If they were unsuccessful,

after the constitutional issues were litigated through the state court system, the juveniles would have a right to appeal directly to this Court. 28 U.S.C. §1257. See Huffman v. Pursue, 420 U.S. 592, 605-06 (1975); see also Allen v. McCurry, 449 U.S. 90 (1980). This is how our federalist system was intended to work, and this is how it must work.

c. The Third Circuit completely ignored the vital national policies embodied in the abstention doctrines in holding that the district court's refusal to abstain was not an appealable collateral order. (7a-10a).

The collateral order doctrine (first announced in Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949)) permits immediate appeal of an otherwise interlocutory order if that order "'conclusively determine[s] the

disputed question, resolve[s] an important issue completely separate from the merits of the action and [is] effectively unreviewable on appeal from a final judgment'. . . . As an additional requirement, . . . an interlocutory order must 'presen[t] a serious and unsettled question.'" Nixon v. Fitzgerald, 457 U.S. 731, 742 (1982). (Citations omitted).

The Third Circuit held (virtually without discussion) that a refusal to abstain is not an appealable collateral order because it is not final, it is not separate from the merits, and it is reviewable on appeal from a final judgment. (7a-10a). That decision is so broad that a pretrial refusal to abstain may not be appealed under any

circumstances.[16] Contrary to the Third Circuit's conclusions, each of the requirements of the collateral order doctrine is met.

First, the nature of the states' rights protected by the policies of federalism and comity make a denial of abstention, at least in part, "effectively unreviewable" on appeal. Where, as

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[16]The Third Circuit's opinion cited no case in which the appealability of a refusal to abstain was at issue. The parties identified only one--Central States, Southeast and Southwest Areas Health and Welfare Fund v. Old Security Life Insurance Co., 600 F.2d 671 (7th Cir. 1979). Unlike the Third Circuit's holding in this case, Central States does not establish that a refusal to abstain is never appealable. Rather, applying the collateral order doctrine requirements the Seventh Circuit held that some requirements of that doctrine were not met given the specific facts of the case. The law was settled that federal (not state) courts had exclusive jurisdiction so that abstention was inappropriate and, consequently, no right was irretrievably lost if appeal was delayed until after trial. In Central States, state judicial officers were not themselves defendants.

here, appeal after trial "would be an empty rite" because the very rights sought to be vindicated would be lost or seriously undermined by the trial, the collateral order doctrine applies. Swift & Co. Packers v. Compania Colombiana Del Caribe, 339 U.S. 684, 689 (1950).

The principles of comity and federalism are designed to protect the state judiciary from being tried in federal court for actions taken in an adjudicatory capacity when state court procedures offer an adequate opportunity to raise the federal claims; that is, they are protected from trial itself. Although this Court has never explicitly so held, its articulation of the federal policies underlying abstention, as summarized above, implicitly incorporate this principle.

Where the defense asserted is a right not to be tried and the defendant can take no further steps to avoid trial, a rejection of that defense is appealable under the collateral order doctrine. See Helstoski v. Meanor, 442 U.S. 500, 506-08 (1979)(claim that speech and debate clause protected from trial); Abney v. United States, 431 U.S. 651, 659-61 (1977)(claim that double jeopardy protected defendant from trial); see also Nixon v. Fitzgerald, 457 U.S. 731 (1982)(claim that absolute immunity protected defendant from trial). Like the defendants in Helstoski and Abney, the petitioners state judicial officers are contesting being "'hale[d] . . . into [federal] court to face trial." Helstoski, 442 U.S., at 507, quoting Abney, 431 U.S., at 659.

Secondly, the district court's refusal to abstain conclusively resolved the abstention question. At the completion of discovery trial will commence. Defendants can do nothing more to prevent trial. Absent the district court judge sua sponte changing his mind, there is no effective opportunity for the abstention issue to be raised again prior to trial.[17]

Thirdly, and again contrary to the Third Circuit's holding, abstention is an important issue completely separate from the merits. The very essence of abstention is that a federal court not address the merits of the constitutional claims. See, e.g., Samuels v. Mackell, 401 U.S. 66, 73

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[17]While, theoretically, defendants could file a motion for summary judgment, defendants are unaware of any additional information or argument that could be made on the abstention issue.

(1971) (relief "should have been denied without consideration of the merits").[18] This Court frequently has underscored the importance of safeguarding "Our Federalism" and the threat posed by federal court intervention.[19]

Lastly, this case present "serious and unsettled" questions[20] -- (a) the extent to which abstention prohibits a federal court from adjudicating a civil rights claim brought against

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[18]The Third Circuit also said that abstention was not separate from the merits because it depended on pleadings and proof. (9a). Certainly, whether abstention is appropriate depends on the pleadings (i.e., who is sued, what claims are being raised, and what relief is sought) but it does not depend on the merits of the claim. And, if pleadings establish appropriateness of abstention, there is no need for further proof.

[19]See cases cited at n.n. 11-15 supra.

[20]A question is unsettled unless this Court has ruled on it. See Nixon v. Fitzgerald, 457 U.S. 731, 743 (1982).

state judicial officers for their performing duties under an allegedly unconstitutional statute or in an allegedly unconstitutional manner; and, (b) whether the abstention doctrines apply when monetary damages (against non-judicial defendants), as well as declaratory and injunctive relief, are sought. Although this Court has ruled on the applicability of abstention in some cases in which state judicial officers were defendants, it has not provided definitive guidance on when abstention is appropriate.[21] Nor, has the Court specifically held that abstention doctrines apply in a §1983 damages

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[21] See, e.g., Juidice v. Vail, 430 U.S. 327 (1977); Gerstein v. Pugh, 420 U.S. 103 (1975); O'Shea v. Littleton, 414 U.S. 488 (1974).

case.[22]

To the extent this Court has given guidance in the areas--that is, to the extent the abstention issues are "settled"--the district court's refusal to abstain was contrary to that guidance (see below). Certainly defendants' right to appeal an erroneous refusal to abstain should not be denied because the refusal is clearly erroneous.

2. Because of the important, serious, and unsettled questions presented by the abstention issue in this case, petitioners also urge this Court to accept jurisdiction of that issue and to remand the case directing the district court to abstain. This

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[22]This Court has held, however, that general principles of comity barred a §1983 damages claim challenging administration of state tax systems. Fair Assessment in Real Estate Association v. McNary, 454 U.S. 100 (1981).

Court clearly has authority to do so. Nixon v. Fitzgerald, 457 U.S. 731, 743 n. 23 (1982). The "question is a pure issue of law" and "concerns of judicial economy fully warrant [this Court's] decision of the important question presented." Ibid.

Each of the three "distinct but related lines of abstention cases"[23] --Pullman, Burford, and Younger abstention[24] is implicated in this case and, in their totality, overwhelmingly demonstrate the need for abstention here. Each "reflect[s] the same sensitivity to the primacy of the State in the interpre-

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[23]Moore v. Sims, 442 U.S. 415, 427 (1979).

[24]See Railroad Commission v. Pullman Company, 312 U.S. 496 (1941), Burford v. Sun Oil Company, 319 U.S. 315 (1943), and Younger v. Harris, 401 U.S. 37 (1971), respectively. See also Colorado River Water Conservation District v. United States, 424 U.S. 800 (1979) for a synopsis of each type.

tation of its own laws and the cost to our federal system of government inherent in federal-court interpretation and subsequent invalidation of parts of an integrated statutory framework." Moore v. Sims, 442 U.S. 415, 427 (1979).

First, Younger abstention applies because the juveniles seek federal court interference with state judicial proceedings and there was an adequate opportunity for them to raise their federal constitutional claims in the state proceedings. All of the named juveniles had detention hearings prior to initiation of their federal lawsuits. None raised his federal constitutional claims in his state hearing; and, none attempted to appeal his detention order. The juveniles' failure to do so does not nullify the applicability of Younger. See Moore v. Sims, 442 U.S. 415, 430 n. 12 (1979); Huffman v. Pursue, 420 U.S.

592, 609 (1975); see also Juidice v. Vail, 430 U.S. 327, 330, 337 (1977) (dicta).

In this case, plaintiffs seek federal intervention not merely into a state civil or even criminal justice system in which abstention concerns are very strong, but in to the state's juvenile judicial system in which abstention concerns are even stronger. The state's juvenile system is akin to the criminal system but the state concerns are greater when children are involved; and the issues are more complex. The state has "a parens patriae interest in preserving and promoting the welfare of [children]." Schall v. Martin, 82-1248 & 82-1278, Slip op. at 9 (U.S. June 4, 1984).

Second, the juvenile justice system is both comprehensive and complex. It balances several competing societal

interests: protecting children from the criminal system, providing children adequate due process safeguards, and maintaining adequate public protection. See 42 Pa. Cons. Stat. Ann. §6301(b) (Purdon 1982). (61a). A federal court's tampering with one aspect risks throwing the system out of balance. Consequently, abstention under the Burford doctrine is appropriate. See Colorado River Water Conservation District v. United States, 424 U.S. 800, 814 (1976). This disruption is less likely to occur if state courts address the issues. State courts deal with this system on a daily basis and are keenly aware of the competing interests and the balancing act required to maintain the system's vitality. State courts are in a better position to determine what corrective procedures, if any, are appropriate.

Third, the subject matter raised here is not one on which Pennsylvania state courts have spoken before, therefore, Pullman abstention is implicated. This Court has stated that broad constitutional attacks on state statutes, such as are presented here, almost always offer an opportunity for narrowing constructions and that federal court interference prevents the evolution of state policies by state tribunals. Moore v. Sims, 442 U.S. 415, 429-30 (1977). More particularly, in Schall v. Martin, 82-1248 & 82-1278. (U.S. June 4, 1984), a case raising similar federal constitutional challenges to a similar juvenile act provision, the Court stated that state court review of detention decisions on a case-by-case basis was appropriate; in this way, state courts "may well flesh out" the state statute. Id., slip op. at 27.

Abstention requires that state judges be given an opportunity to do what they are supposed to do--interpret state statutes in light of constitutional requirements.

Furthermore, this is not an isolated case affecting one juvenile or one judge. The issues affect the entire state juvenile justice system; they will have ramifications for aspects of the system beyond detention because detention is interrelated with other concepts in the juvenile act. Again, abstention concerns are very strong in cases of such system-wide impact. See Fair Assessment in Real Estate Association v. McNary, 454 U.S. 100, 114-15 (1981).

Not only is the very existence of the federal suit intrusive, as discussed above, but a grant of the relief sought would be additionally intrusive. The juveniles seek a federal court order controlling juvenile court

judges' consideration of matters relating to the detention decision. The complaint requests continued federal court jurisdiction to insure state court compliance. The possibility of state judicial officers being charged with contempt exists in perpetuity. Abstention precludes such an entanglement of the federal courts with the state courts. See O'Shea v. Littleton, 414 U.S. 488, 501-02 (1974).

While the constitutional issues raised should be addressed, they must be addressed in the first instance by state courts. As this Court frequently has emphasized, state courts are presumed competent to handle federal constitutional issues.[25] Pennsylvania state courts have not demonstrated an inability to do so. By failing to raise their federal

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[25]See cases cited at n.13 supra.

constitutional issues in their state proceedings (and, instead, raising them for the first time in federal court), plaintiffs have deprived the state courts of the right to rule on their own procedures, the right to correct any problems they might perceive in those procedures, and the right to construe the statute narrowly--altering or eliminating the constitutional concerns. This deprivation can be corrected only by this Court accepting jurisdiction of this case and remanding with directions to abstain. It is simply unnecessary and inappropriate for a federal court to interfere at this time.

Conclusion

For these reasons, a writ of certiorari should issue to review the decision of the Third Circuit.

Respectfully submitted,

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Date: October 2, 1984

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-1730

COLEMAN, KASEEM, a minor, by his mother and next friend, DELORES LEE; and MATTOX, AARON, a minor, by his mother and next friend, DORIS MATTOX; WIGGINS, LAWRENCE LEE, and WIGGINS, FREDDIE LEE, minors, by their mother and next friend, BARBARA WIGGINS, on their own behalf and on behalf of all others similarly situated,

Appellees

v.

JOSEPH H. STANZIANI and LAWRENCE A. BROWN, individually and in their official capacities as Judges of the Montgomery County Court of Common Pleas, Juvenile Division, on their own behalf and on behalf of all other Juvenile Court Judges similarly situated in the Commonwealth of Pennsylvania; ANTHONY GUARNA, individually and in his official capacity as Chief Juvenile Probation Officer, Montgomery County, on his own behalf and on behalf of all other juvenile probation officers similarly situated in the Commonwealth of Pennsylvania;

THE MONTGOMERY COUNTY COURT OF COMMON PLEAS, JUVENILE DIVISION; and MONTGOMERY COUNTY, PENNSYLVANIA,

Appellants

(D. C. Docket No. 81-2215)

No. 83-3539

JOSEPH H. STANZIANI and LAWRENCE A. BROWN, individually and in their official capacities as Judges of the Montgomery County Court of Common Pleas, Juvenile Division, on their own behalf and on behalf of all other Juvenile Court Judges similarly situated in the Commonwealth of Pennsylvania;

ANTHONY GUARNA, individually and in his official capacity as Chief Juvenile Probation Officer, Montgomery County, on his own behalf and on behalf of all other juvenile probation officers similarly situated in the Commonwealth of Pennsylvania;

THE MONTGOMERY COUNTY COURT OF COMMON PLEAS, JUVENILE DIVISION;
and
MONTGOMERY COUNTY, PENNSYLVANIA,
Petitioners

v.

HONORABLE JOSEPH S. LORD, III,
Nominal Respondent

KASEEM COLEMAN, a minor, by his mother and next friend, DELORES LEE; AARON MATTOX, a minor, by his mother and next friend, DORIS MATTOX; LAWRENCE LEE WIGGINS and FREDDIE LEE WIGGINS, minors, by their mother and next friend, BARBARA WIGGINS, on their own behalf and on behalf of all others similarly situated,
Actual Respondents

(Petition for Writ of Mandamus or Prohibition)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARGUED: MAY 17, 1984

BEFORE: GIBBONS and HUNTER, Circuit Judges, and STAPLETON, District Judge*

(Opinion filed June 4, 1984)

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* Hon. Walter K. Stapleton, United States District Judge for the District of Delaware, sitting by designation.

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OPINION OF THE COURT

GIBBONS, Circuit Judge:

Several juveniles have filed in the United States District Court for the Eastern District of Pennsylvania a class action for injunctive, declaratory and other relief pursuant to 42 U.S.C. §1983 (Supp. V 1981), challenging the constitutionality of the "preventive detention" provisions of the Pennsylvania Juvenile Act, 42 Pa. Cons. Stat. Ann. §§ 6325, 6335, 6341 (Purdon 1982). The

named defendants are Montgomery County Juvenile Court Judges Stanziani and Brown. Montgomery County Juvenile Probation Officer Guarna, the Montgomery County Juvenile Court, and the County. The trial court certified a plaintiff class consisting of all juveniles who pursuant to the challenged statutes are now, or will be in the future, detained prior to a disposition hearing or trial. The court also certified a defendant class composed of all Juvenile Court Judges, masters, and probation officers who are now, or will be in the future, responsible for conducting preventive detention proceedings under the challenged statutes.

The defendants moved in the district court for judgment on the pleadings, and for partial decertification of the plaintiff class.

They contended that Younger v. Harris, 401 U.S. 37 (1971) required a dismissal of the complaint, or that abstention on the authority of Railroad Commission v. Pullman Co., 312 U.S. 496 (1941) or Burford v. Sun Oil Co., 319 U.S. 315 (1943) was appropriate. The trial court denied the motions for judgment on the pleading and for partial decertification of the class on September 14, 1983, and scheduled a discovery conference for October 6, 1983.

On September 26, 1983, the defendants filed a notice of appeal from the order denying their motion for judgment on the pleadings. The class representative plaintiffs moved to dismiss that appeal as interlocutory. The defendants then filed a petition for a writ of mandamus directing the district judge to grant their motion. We dismiss the appeal and deny mandamus.

I.

Appealability

The district court has neither granted nor denied injunctive relief. Cf. 28 U.S.C. §1292(a)(1)(1982). Nor has the court entered a final judgment on any arguably separate claim. Cf. Fed. R. Civ. P. 54(b). Nor has the court determined that there is a controlling question of law with respect to which there is a substantial ground for difference of opinion which should be resolved in an immediate appeal. Cf. 28 U.S.C. §1292(b)(1982). Indeed, the court was not asked to certify any such controlling question. Thus we have appellate jurisdiction only if an order denying a motion for judgment on the pleadings is a final judgment within the meaning of 28 U.S.C. §1291 (1982). An order denying a Rule 12(c) motion, however, is a prime example of an interlocutory order.

The Attorney General of Pennsylvania, who appears for the defendants, urges vehemently that when he makes a motion to dismiss on Younger v. Harris grounds the denial of such a motion must be treated as a final judgment within the collateral order doctrine. Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546-47 (1949). In order to qualify as collaterally final, however, "[t]he order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment." Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 375 (1981) quoting Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (1978). The order appealed from satisfies none of these criteria. It does not conclusively determine

anything, since the district court is free to reconsider it at any time. It is not separate from the merits, because a Younger v. Harris ruling requires a determination of the appropriateness of the requested relief in light of the pleadings and proof. It is not unreviewable on appeal from a final judgment, for scores of Younger v. Harris issues have been heard and decided in such appeals.

The Attorney General urges that the order should be treated as a final rejection of a claim of immunity. We have rejected a similar contention in Forsyth v. Kleindienst, 729 F.2d 267, 273-74 (3d Cir. 1984) (Forsyth II). Moreover the immunity claim is in this instance a highly dubious one, since injunctive and declaratory relief are sought. See Pulliam v. Allen, 52

U.S.L.W. 4525 (1984); Conover v. Montemuro, 477 F.2d 1073, 1094 (3d Cir. 1973)(Gibbons, J., concurring). Thus the arguement for enlarging the collateral order doctrine is in this case far weaker than with respect to immunity from a claim for money damages made in Forsyth II for a former high executive branch officer of the federal government. "[T]his Circuit has consistently maintained that the collateral order doctrine should be sparingly applied...." Akerly v. Red Barn System, Inc., 551 F.2d 539, 543 (3d Cir. 1977). The Attorney General has referred us to no case holding that it should be extended so as to embrace the denial of a motion to dismiss on abstention grounds.

The motion to dismiss the appeal will be granted.

II.

Mandamus

Alternatively, the Attorney General urges that we should issue a writ of mandamus directing the trial court to dismiss the complaint. The case is one over which the trial court has undoubted subject matter jurisdiction. The order disposed of a motion within that jurisdiction. The merits of the order are reviewable on appeal from a final judgment. An abstention decision involves the exercise of discretion. Mandamus to control the exercise of that discretion is wholly inappropriate.

The petition for mandamus will be denied.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KASEEM COLEMAN, et al., : CIVIL ACTION

v. : No. 81-2215

JOSEPH STANZIANI, et al. :

O P I N I O N

Lord, S.J. September 14, 1983

Plaintiffs have brought suit under 42 U.S.C. §1983 challenging the constitutionality of the Pennsylvania Juvenile Pretrial Detention statutes. The pertinent portions are attached hereto as an appendix. Plaintiffs seek damages, declaratory and injunctive relief. I have certified a plaintiffs' and a defendants' class. Plaintiffs' class consists of all allegedly delinquent juveniles in Pennsylvania who are or will in the future be detained before adjudication pursuant to 42 Pa. Cons. Stat. Ann. §§ 6625 and 6335, and

all adjudicated delinquent juveniles who are now or in the future will be detained before their disposition hearing pursuant to § 6341.

The defendant class is composed of all juvenile court judges and masters and all juvenile probation officers in Pennsylvania who are now or who will be responsible for hearing delinquency matters and conducting detention procedures.

Defendants have moved for judgment on the pleadings and/or for partial decertification of plaintiffs' class. Defendants argue that named plaintiffs do not have standing to represent the interest of future pretrial detainees; that those named plaintiffs who were in detention at the time of filing the complaint must bring a habeas corpus action, exhausting their remedies in state court, rather than a suit under

§ 1983; and that Younger v. Harris, 401 U.S. 37 (1971) or Railroad Commissioner v. Pullman, 312 U.S. 496 (1941) or Burford v. Sun Oil Company, 319 U.S. 315 (1943) requires that I abstain from deciding the merits of the case. I shall deny defendants' motion.

I. Standing

There are four named plaintiffs. At the time of the filing of the complaint, plaintiffs Coleman and Mattox had already been released from detention; plaintiffs Lawrence and Freddy Wiggins were in detention pursuant to the provisions of the challenged statute.

Defendants argue that named plaintiffs Coleman and Mattox lack standing. Article III of the United States Constitution requires that those who seek to invoke the jurisdiction of the federal courts must allege an actual

case or controversy. Flast v. Cohen, 392 U.S. 83, 94-101 (1968). A plaintiff must show that he has a "personal stake in the outcome," Baker v. Carr, 369 U.S. 186, 204 (1962) and that he "has sustained or is immediately in danger of sustaining some direct injury." City of Los Angeles v. Lyons, 51 U.S.L.W. 4424, 4426 (April 30, 1983).

Defendants agree that named plaintiffs Mattox and Coleman would have standing to assert a valid damages claim. Defendants argue, however, that the claim of Coleman and Mattox for damages is faulty because defendants are judges and probation officers who would enjoy at least a good faith immunity. Because it is clear from the pleadings that plaintiffs were detained pursuant to a state statute which has not previously been found unconstitutional, defendants claim that their good faith immunity is

established by the pleadings. Defendants fail to consider, however, that Montgomery County is also a named defendant in this action. Even if I were to find that individual judges and probation officers were immune[1] because of absolute or good faith immunity, the county would not acquire immunity and would still be subject to a suit for damages. See Owen v. City of Independence, 445 U.S. 622 (1980). Therefore, plaintiffs Mattox and Coleman have standing to bring their damages action in federal court.

The question then arises whether any of the named plaintiffs have standing to seek injunctive and declaratory relief. In City of Los Angeles v. Lyons, supra, the plaintiff had suffered injury as a

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[1]Because it is not necessary for my determination of the validity of the damages claim, I decline to reach the question of whether individual defendants are immune.

result of a chokehold applied to him pursuant to Los Angeles police regulations. The Court held that Lyons clearly presented a case or controversy as to the damages claim, but that he did not have standing to seek injunctive relief because his standing to claim damages did not establish "a real and immediate threat" that he would again be stopped and choked into unconsciousness. Clearly, therefore, under Lyons, if this case were brought solely by Coleman and Mattox in their individual capacity, they would not have standing to seek an injunction of the pretrial detention statute.

Because I find that plaintiffs Freddie and Lawrence Wiggins have standing to seek injunctive and

declaratory relief, I need not reach the question of whether the claims of Coleman and Mattox for damages would be sufficient to grant them standing to seek injunctive and declaratory relief in a class action suit. Like defendants here, however, courts have tended to confuse the requirements for standing and class representation under Federal Rule of Civil Procedure 23. "Class Standing and the Class Representative," 95 Harv. L. Rev. 1637 (1981).

I have already certified the class to include all juveniles who will be detained in the future pursuant to the provisions in question. There is a point where the class becomes the plaintiff in a lawsuit. In mootness cases, it appears that that point occurs at certification of the class. Id. at 1643 n. 39. See Sosna v. Iowa, 419 U.S. 393 (1975)(holding that even though the

class was moot as to the named plaintiff, the case was live for the class which plaintiff had been certified to represent). Because the class in this case is defined to include all who will be detained in the future, there is no question that there is a "real and immediate threat" that class members will be subject to the application of the allegedly unconstitutional provisions of the statute. Therefore, the allegations of Coleman and Mattox of specific injury, coupled with an unambiguous, well-defined class whose members will unavoidably be subject to the allegedly unconstitutional statute would distinguish this case from O'Shea v. Littleton, 414 U.S. 488, 494-95, n. 3, 496 (1974).

The real question here is whether Coleman and Mattox are adequate class representatives. I have already

concluded that Coleman and Mattox fulfill the requirements for adequate representation. Their attorney is qualified, experienced, and able to conduct this litigation and Coleman and Mattox do not have interests that are antagonistic to those of the class. Wetzel v. Liberty Mutual Insurance Company, 508 F.2d 239, 247, cert. denied, 421 U.S. 1011 (1975).

As I noted above, plaintiffs need not rely, however, on the standing of Coleman and Mattox to bring their damages claim in order to pursue injunctive relief. At the time of the filing of the complaint, named plaintiffs Freddie and Lawrence Wiggins were in custody pursuant to the challenged provisions of the statute. Therefore, the Wiggins brothers have standing to request injunctive and

declaratory relief.[2]

II. Exhaustion of State Remedies

Defendants claim that even though plaintiffs Wiggins have standing to bring this suit for declaratory and injunctive relief, the suit is barred by the doctrine set forth in Preiser v. Rodriguez, 411 U.S. 475 (1973) as to them and those members of the plaintiffs' class presently in detention.

In Preiser, plaintiffs were state prisoners who brought a civil

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[2]The mootness of the Wiggins' claims once they were released from prison does not require me to dismiss the case. This case belongs to the narrow class of cases approved in Sosna v. Iowa, supra, in which the termination of the named plaintiff's case does not moot the claims of the unnamed members of the class. It also falls squarely within the exception to the Sosna requirement that the class be certified before the named plaintiffs' claim is mooted because it is "capable of repetition, yet evading review." Gerstein v. Pugh, 420 U.S. 103, 110 n. 11 (1975).

rights action in federal court under 42 U.S.C. § 1983, alleging that they had been deprived unconstitutionally of their good conduct time credits. Plaintiffs sought injunctive relief to restore the credits, which in each case would result in their immediate release. The Court held that a habeas corpus action under 28 U.S.C. § 2254 was plaintiffs' exclusive remedy because plaintiffs' suit attacked the very "fact and duration" of their confinement.

The Court distinguished the case from one challenging conditions of confinement, stating that a suit challenging conditions rather than the fact or duration of confinement is the proper subject of a § 1983 action. Furthermore, the Court stated that there are situations in which a plaintiff could choose to bring either a federal habeas corpus action or a § 1983 suit. Id. at 499.

The Court's holding in Preiser is significant because the federal habeas corpus statute requires that a litigant exhaust state remedies before bringing suit in federal court, a requirement that is absent from 42 U.S.C. §1983. Thus, in the case at bar, if defendants are correct in asserting that the Preiser doctrine applies to plaintiffs' suit, I would be forced to dismiss the case, requiring plaintiffs to go to state court first.

It would appear at first blush that a suit challenging the preventive detention statute challenges the fact or duration of plaintiffs' confinement and would therefore be governed by the Preiser doctrine. I find, however, that the Preiser doctrine is inapplicable to the case before me. Since Preiser, the United States Supreme Court has decided two cases which limit the broad language

set forth in Preiser. In Gerstein v. Pugh, 420 U.S. 103 (1975), a case arising in Florida that challenged the plaintiffs' pretrial detention without a probable cause hearing, the Court found the Preiser doctrine inapplicable because plaintiffs did not seek and the court did not order release from custody as a result. The only relief sought in Gerstein was an order that the state grant plaintiffs a probable cause hearing. Id. at 107 n. 6.

In Wolff v. McDonnell, 418 U.S. 539 (1974), the plaintiffs brought a suit under 42 U.S.C. § 1983 challenging procedures and practices in the Nebraska prisons. The Court upheld the court of appeals' decision that Preiser precluded the district court from granting the remedy sought in the complaint -- a restoration of good time credits. However, the Court held further that

Preiser did not preclude the district court from examining the validity of the procedure employed in the Nebraska prison system for imposing sanctions on prisoners, including the withdrawal of good time credits. In Wolff, the Court held that the district court had to determine the constitutionality of the state prison system's procedures because plaintiffs had brought a damages action which was a proper subject of a claim brought pursuant to 42 U.S.C. § 1983. The Court went even further. It stated that the Preiser doctrine would not bar a litigant from obtaining an injunction of the prospective enforcement of unconstitutional prison regulations. The Court stated:

> Such a declaratory judgment as a predicate to a damages award would not be barred by Preiser; and because under that case, only an injunction restoring good time improperly taken is foreclosed, neither would it preclude a litigant with standing

> from obtaining by way of ancillary relief an otherwise proper injunction enjoining the prospective enforcement of invalid prison regulations.

Id. at 555 (emphasis added).

Thus, in order to avoid the habeas requirement of exhaustion, whatever relief I may grant, except damages, can be prospective only.

Wright v. Cuyler, 624 F.2d 455 (3d Cir. 1980) further supports my conclusion. In Wright, the court held that the Preiser doctrine was inapplicable to a prisoner who challenged the Pennsylvania Bureau of Corrections' application to plaintiff of eligibility standards for the state prisoner's prerelease furlough. Even though a finding by the court that the eligibility standards were unconstitutional, as applied to plaintiff, would result in shortening plaintiff's period of confinement, the court distinguished Preiser.

In distinguishing Preiser, the Third Circuit in Wright, like the Supreme Court in Gerstein and Wolff, emphasized the relief sought by the plaintiff. In Wright, the plaintiff challenged the procedures used by officials to determine eligibility for the furlough program, and demanded a fair application of standards. He did not demand admission to the program. The court stated:

> Wright's demand for fair application of the furlough eligibility criteria, as distinct from his demand for admission to the program, relates to the manner by which the prison authorities reach their decision and not the outcome of their decision. Thus, this particular claim of Wright's unmistakably goes not to the fact or duration of confinement but rather to the fairness of the decision making process. Although impartial application of his chance to gain admission to the furlough program, injunctive relief ordering impartial application would not intrude upon or divest the prison administration of its ultimate discretion to grant or deny Wright's admission to the program. The Preiser rule is therefore in any event inapplicable.

Id. at 458 n. 5.

Furthermore, in Wright, at 624 F.2d 458 n. 5, the court cited favorably Project Release v. Provost, 463 F. Supp. 1033, 1038-39 (E.D.N.Y. 1978). The facts and procedural posture of Project Release are very similar to the case before me. In Project Release plaintiffs were a non-profit corporation suing individually and on behalf of its members and an individual who was committed to a state psychiatric center. The named plaintiffs filed a suit under 42 U.S.C. § 1983, seeking to represent a class of "all persons who have been or may in the future be involuntarily committed to mental hospitals." The suit challenged the standards and procedures for civil commitment embodied in provisions of the New York Mental Hygiene Law. Plaintiffs sought an injunction of certain provisions that plaintiffs alleged were unconstitutional

because the standards were vague and overbroad.

The court held that the Preiser doctrine was inapplicable because plaintiffs sought "constitutional substantive standards and procedures for commitment" rather than immediate or speedier release from confinement.

In the case at bar, plaintiffs are not seeking release from pretrial detention as a remedy. Just as in Gerstein, Wright, and Project Release, plaintiffs here challenge the standards and procedures by which they are committed rather than the fact or duration of their incarceration.

III. Younger Abstention

Notwithstanding my conclusion that plaintiffs have standing to seek injunctive relief and that the Preiser doctrine is inapplicable, plaintiffs

argue that the doctrine set forth in Younger v. Harris, supra, and its progeny require a federal court to abstain from deciding this case.

In Younger, the Court held that even where a plaintiff challenged a facially invalid statute, principles of comity and federalism required a federal court to refrain from enjoining a state court's ongoing criminal proceeding if the defendant in the state court proceeding could raise the constitutionality of the statute as a defense to his prosecution. Since then, the Younger doctrine has been expanded considerably by the Supreme Court.

In Huffman v. Pursue, 420 U.S. 592 (1975), the Court applied the Younger doctrine to state civil proceedings that were akin to criminal prosecutions. The Court also expanded the definition of "ongoing proceedings"

by requiring that the plaintiff in federal court who had been subject to a state trial proceeding exhaust his state appellate remedies before seeking relief in federal court.

Juidice v. Vail, 430 U.S. 327 (1977) and Moore v. Sims, 442 U.S. 415 (1979) went even further. In both cases, the Court stressed that for Younger abstention to apply, the federal plaintiff needs only to have had the "opportunity to raise his federal constitutional claims in adequate state court proceedings."

In Juidice v. Vail, the federal plaintiff, a judgment debtor, sought to have the New York contempt provisions enjoined as unconstitutional. Younger required the federal court to abstain because the plaintiff had failed to appear at the state contempt hearing. Had the plaintiff attended the state

contempt hearing, he could have raised his constitutional claims as a defense to the proceedings. Id. at 330. And, had the New York county trial court ruled against him, finding the contempt statute constitutional, plaintiff could have appealed the decision to the Appellate Division of the New York Supreme Court. Id. Even though plaintiff chose not to avail himself of the New York state court's proceedings, if he had attended, the state court proceedings would have provided him adequate opportunity to raise his federal constitutional claims in state court and his federal suit was barred by the Younger doctrine.

In Moore v. Sims, the Court stressed that for the purposes of Younger abstention "the only pertinent inquiry is whether the state proceedings afford an adequate opportunity to raise

constitutional claims." Id. at 430. In that case, the Court held that Younger abstention was necessary because Texas law did not impose any procedural barriers to attacking the constitutionality of the Texas Family Code in state court proceedings.

As in Juidice v. Vail, the plaintiffs in Moore v. Sims ignored critical state court proceedings. In Moore, plaintiffs' children had been removed from their custody pursuant to an ex parte order that was entered pursuant to an allegedly unconstitutional state statute whose purpose was to protect battered children.

The plaintiffs sought relief in both the federal and state forums, creating a procedural entanglement. After the procedural morass was disentangled, and the children returned to their parents, the state filed a

"Suit Affecting the Parent-Child Relationship" as provided for by the statute. The state court ordered a hearing requiring plaintiffs to show cause why one of the children should not be placed in custody of his grandparents. The plaintiffs avoided service and filed suit in federal court. The Court held that because plaintiffs could have challenged the provisions of the statute in the state proceedings, Younger abstention was required.

A. Damages Suit

As far as the damages suit brought by Celeman and Mattox is concerned, the Younger doctrine has not been expanded to bar an action brought for damages under 42 U.S.C. § 1983 in federal court. Juidice v. Vail, 430 U.S. at 339 n. 16.

Until now, the Supreme Court has consistently refused to require the exhaustion of state remedies in cases brought pursuant to § 1983. Monroe v. Pape, 365 U.S. 167 (1961), Steffel v. Thompson, 415 U.S. 452 (1974), Mitchum v. Foster, 407 U.S. 225 (1972), Patsy v. Board of Regents of the State of Florida, 457 U.S. 496 (1982). A finding that Younger applies to a damages action would, in effect, require a litigant to exhaust his state remedies before bringing a § 1983 action in federal court. Furthermore, in a situation like the case at bar where the state remedies that must be exhausted are judicial rather than administrative, a finding that Younger applies would require the litigant to bring his § 1983 suit in state court or forego his action. While such an exhaustion requirement would probably contravene the legislative

intent and purpose of § 1983, it would accomplish little to further the values of comity and federalism embodied in Younger.

Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, the precursor to § 1983, was enacted to enforce the fourteenth amendment. Both the fourteenth amendment and the Civil Rights Act were "crucial ingredients in the basic alteration of our federal system accomplished during the Reconstruction era." Patsy, 457 U.S. at 503. The "very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights -- to protect the people from unconstitutional action under color of state law 'whether that action be executive, legislative, or judicial.'" Mitchum v. Foster, 407 U.S. at 242 (quoting Ex Parte Virginia, 100

U.S. 339, 346 (1879). This purpose is furthered by allowing the plaintiff in a § 1983 damages action to file suit in federal court. Because there are in this case no ongoing state proceedings to which a plaintiff in a § 1983 damages action is a party, the problem of federal intervention in a state proceeding is non-existent. The mere fact that state interest in the outcome is high is not a valid reason to require Younger abstention.

B. Injunctive Relief

For those plaintiffs seeking injunctive relief, Moore v. Sims, supra, requires an examination of the state procedures to determine whether the state proceedings afford an "adequate opportunity" to raise their constitutional claim. Under § 6324(2) of the Pennsylvania Juvenile Detention Statute,

the child may be taken into custody pursuant to the laws of arrest. Once a child is in custody, § 6325 allows the correctional officer to detain the child if detention "is required to protect the person or property of others or of the child. ...". Section 6326(3) requires that a child who is to be detained be brought before the court or delivered to a detention center designated by the court "with all reasonable speed." Once a child is brought before the Court or delivered to the detention facility, § 6331 requires the "intake or other authorized officer of the court" to release the child "unless it appears that his detention . . . is warranted or required under § 6325." If the child is not released, a petition shall be presented to the court within twenty-four hours of the child's admission or the next court business day.

Section 6332 requires that the court or master hold an informal hearing not later than seventy-two hours after the child is placed in detention to determine whether detention is required under § 6325 and that probable cause exists. The child, his parents or guardian shall be given reasonable notice before the hearing. Before the hearing begins, the court or master shall inform the parties of their right to counsel and to appointed counsel if they are needy. Section 6337 allows the court to continue the proceeding to enable the party to get counsel.

Under § 6335, not later than ten days after the petition is filed, an adjudicatory hearing must be held before the judge without a jury in which the prosecutor presents evidence. The juvenile has the right to present witnesses at this adjudicatory hearing.

The adjudicatory hearing may be continued up to ten days and a child kept in detention for that additional period if the court determines at a hearing that evidence will be available at a later date and that the child or community will be in danger or the child will abscond if he is not detained.

After the hearing, under § 6341, the court shall make its finding as to whether the prosecutor has proven beyond reasonable doubt that the child committed the acts ascribed to him.

These procedures do not guarantee plaintiffs an adequate opportunity to raise their constitutional claim. Section 6325 allows a correctional officer to make a determination that a child should be detained. No hearing is given at this stage in which plaintiffs can raise their constitutional claims. Section 6331

requires an intake officer to review the decision to detain the child but no hearing is granted at this stage. A child can be in detention for up to seventy-two hours without having the opportunity for a hearing or to raise this constitutional challenge. Up to this point in the proceedings, therefore, the procedural situation is exactly the same as that in Gerstein v. Pugh, supra, a case challenging the pretrial detention of Florida inmates without a probable cause hearing. As in Gerstein,[3] for the first three days of detention pursuant to §§ 6325 and 6331, a child can be detained in Pennsylvania with absolutely no opportunity to challenge the constitutionality of the procedures.

---

[3]In Gerstein, the Court refused to abstain on Younger principles because there was no hearing in which plaintiffs could raise their constitutional challenges.

Three days after apprehension, at the informal detention hearing provided for in § 6332, the juvenile has, for the first time, the opportunity to challenge the constitutionality of his detention. Immediately before the detention hearing, the court or master must inform the child for the first time that he has the right to be represented by counsel and to have counsel appointed. Presumably, at this point the detained child must choose between waiving his right to obtain counsel and requesting the continuance provided for in § 6337 so that he can obtain counsel. The statute is unclear as to how much longer the child can be detained awaiting the appointment of counsel.

Even assuming that the child has counsel at his seventy-two hour detention hearing, if the juvenile raises a constitutional challenge to his

detention at the hearing and it is denied, an appeal from a denial will be quashed as interlocutory. Pennsylvania courts have consistently held that an appeal in a delinquency case is interlocutory until after the disposition stage, the equivalent of sentencing. Commonwealth v. Kiker, 289 Pa. Super. 187, 432 A.2d 1115 (1981). Specifically, the courts have quashed appeals from detention orders as interlocutory. In the Matter of Brown, 268 Pa. Super. 563, 408 A.2d 1146 (1979). And, once the juvenile is released from confinement, Pennsylvania courts will dismiss as moot appeals from the decision to detain. In the Interests of Del Signore, 249 Pa. Super. 149, 375 A.2d 803 (1977).

An individual juvenile cannot raise a constitutional challenge to the Juvenile Act on behalf of a class in the

course of the juvenile court proceedings described above because Pennsylvania Rule of Civil Procedure 1703 requires that class actions be initiated by the filing of a separate complaint. Therefore, the doctrine recognized in federal courts of "capable of repetition yet evading review" which allows a named plaintiff to represent a class even though his claim has become moot will not be applicable. Assuming the Pennsylvania courts recognize that doctrine, the only recourse in state court would be for the plaintiff to institute a separate section 1983 suit in state court. Requiring the plaintiffs to institute a separate action in state court, however, would go well beyond the Younger doctrine. As explained above, a requirement that a plaintiff must exhaust his state judicial remedies has so far consistently been rejected by the Supreme Court.

Once a juvenile appears at the adjudicatory hearing required by § 6335, the child may have already been detained more than twenty days without an opportunity to appeal a finding by the lower court or master that his detention is constitutional. At the adjudicatory hearing, juveniles have challenged the admissibility of statements and identification on the grounds that they were obtained during their detention which did not comply with the mandates of the statute. Commonwealth v. Bey, 249 Pa. Super. 185, 375 A.2d 1304 (1977), In the Interest of Schirner, 264 Pa. Super. 185, 399 A.2d 728 (1979), In the Interest of White, 264 Pa. Super. 190, 399 A.2d 731 (1979). Presumably, juveniles would be permitted to raise at the adjudicatory hearing the question of the constitutionality of their detention indirectly in order to challenge the

admissibility of statements and identifications obtained during the detention. And, presumably, after a finding of delinquency and disposition by the hearing judge or master, a juvenile could appeal the court's decision to admit the statements or identification obtained as a result of his allegedly unconstitutional detention. Where the juvenile's challenge to the constitutionality of of his detention, however, does not attack the admissibility of evidence tending to establish guilt or innocence, the challenge will not be heard at the adjudicatory hearing because it will be irrelevant.

It is clear from the procedures described above that the only opportunity a juvenile has to attack the constitutionality of his detention directly is at the § 6332 informal

detention hearing. Because Huffman v. Pursue, supra, and Juidice v. Vail, supra, stress the importance of pursuing state appellate remedies, and no such remedies exist in Pennsylvania, I find that the opportunity afforded to the plaintiffs in Pennsylvania state courts is inadequate.

Furthermore, because plaintiffs' constitutional challenge to the preventive detention statutes is an attack on a collateral issue which does not affect the merits of the prosecution, federal injunctive or declaratory relief in this case would not be the intrusive interference which Younger sought to bar. Fernandez v. Trias Monge, 586 F.2d 848 (1st Cir. 1978). Although the collateral nature of a constitutional attack is not determinative of whether Younger abstention is appropriate or not, State of New

Jersey v. Chesimard, 555 F.2d 63 (3d Cir. 1977)(en banc), when an attack which is collateral to the merits of the prosecution is combined with a lack of procedures in state court by which to challenge the constitutionality of the allegedly unconstitutional statute, Younger abstention is inappropriate. Gerstein v. Pugh, supra, Fernandez v. Trias Monge, supra.

In Gerstein v. Pugh, a case challenging the absence of a probable cause hearing, the Court affirmed the district court's finding that Younger abstention was inappropriate by stating:

> The District Court correctly held that respondents' claim for relief was not barred by the equitable restrictions on federal intervention in state prosecutions, Younger v. Harris, . . . the injunction was not directed at the state prosecutions as such, but only at the legality of pretrial detention without a judicial hearing, an issue that could not be raised in defense of the criminal prosecution. The order to hold preliminary hearings could not prejudice the conduct of the trial on the merits.

Defendants argue that even if the Younger doctrine does not require abstention I should exercise my discretion to abstain under the doctrines set forth in Railroad Commissioner v. Pullman, supra, or Burford v. Sun Oil Company, supra.

Pullman abstention "may be invoked where there is an unsettled question of state law, the resolution of which would affect the decision of a federal constitutional issue, either by obviating the need to decide it or by changing the light in which it must be viewed." Heritage Farms, Inc. v. Solebury Township, 671 F.2d 743 (3d Cir. 1982), cert. denied, 102 S.Ct. 2270.

Plaintiffs argue that Pullman abstention is inappropriate here for two reasons. First, they argue that since they are claiming that preventive detention per se, violates the due

process clause of the fourteenth amendment, a state court's narrowing interpretation of the statute would neither resolve nor affect the issue. Secondly, they argue that even if the fourteenth amendment does not prohibit all preventive detention, the statute violates due process because it is so vague and overbroad in its absence of procedures and standards of proof for determining whether a juvenile presents a danger to the community that it cannot be cured short of rewriting the statute.

Although I disagree that I will necessarily reach the question of whether preventive detention is unconstitutional per se, I agree with plaintiffs that the statute is so clearly lacking in standards that it would be impossible for the Pennsylvania Supreme Court to narrow the statute without rewriting it.

I refuse to exercise my discretion to abstain under the Pullman doctrine.

First, it would be useless to allow the State Supreme Court to attempt to narrow the statutory provisions in question. Secondly, this motion to abstain was filed almost two years after the filing of the complaint, and thirdly, my withdrawal from the adjudication at this point would cause an extended and unwarranted delay in the ultimate disposition of the case. Frederick L. v. Thomas, 557 F.2d 373, 383 (3d Cir. 1977).

Burford abstention is appropriate "where a difficult question of state law is presented which involves important state policies or administrative concerns." Heritage Farms, Inc., 671 F.2d at 746. It has two components: a procedural and a substantive one. The procedural component

requires a federal court to defer to a specialized state regulatory agency for issue entrusted to the agency. Burford v. Sun Oil Company, supra.

The substantive component allows a federal court to abstain where difficult questions of state law bear on policy problems "of substantial public import whose importance transcends the results in the case then at bar." Colorado River Water Conservation District v. United States, 424 U.S. 800, 814 (1976). Burford abstention is a limited doctrine which should not be applied "merely because resolution of a federal question may result in the overturning of a state policy." Zablocki v. Redhail, 434 U.S. 374, 380 n.5 (1977). Clearly, the federal constitutional concerns in this case outweigh the state's interest in detaining juveniles before trial. Therefore, I

refuse to exercise my discretion to abstain under the Burford doctrine.

For the reasons explained above, I shall deny defendant's motion for judgment on the pleadings and/or for partial decertification of the plaintiffs' class.

Joseph S. Lord, III S.J.

Appendix to Opinion of the Court

The following are the statutory provisions challenged by plaintiffs. In its pertinent part 42 Pa. Cons. Stat. Ann. § 6325 reads as follows:

> A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless his detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court . . .

In its pertinent portions 42 Pa. Cons. Stat. Ann. § 6335 reads as follows:

> General rule. After the petition has been filed the court shall fix a time for hearing thereon, which, if the child is in detention or shelter care shall not be later than ten days after the filing of the petition. If the hearing is not held within such time, the child shall be immediately released from

detention or shelter care. A child may be detained or kept in shelter care for an additional single period not to exceed ten days where:

(1) the court determined at a hearing that:

(i) evidence material to the case is unavailable;
(ii) due diligence to obtain such evidence has been exercised; and
(iii) there are reasonable grounds to believe that such evidence will be available at a later date; and

(2) the court finds by clear and convincing evidence that:

(i) the life of the child would be in danger;
(ii) the community would be exposed to a specific danger; or
(iii) the child will abscond or be removed from the jurisdiction of the court.

The court shall direct the issuance of a summons to the parents, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at a time fixed to answer the allegations of the petition. The summons shall also be directed to the child if he is 14 or more years of age or is alleged to be a delinquent. A copy of the petition shall accompany the summons.

42 Pa. Cons. Stat. Ann. § 6341 reads as follows:

(a) General rule.---After hearing the evidence on the petition the court shall make and file its findings as to whether the child is a dependent child, or if the petition alleges that the child is delinquent, whether the acts ascribed to the child were committed by him. If the court finds that the child is not a dependent child or that the allegations of delinquency have not been established it shall dismiss the petition and order the child discharged from any detention or other restriction theretofore ordered in the proceeding.

(b) Finding of delinquency.---If the court finds on proof beyond a reasonable doubt that the child committed the acts by reason of which he is alleged to be delinquent it shall enter such finding on the record and it shall then proceed immediately or at a postponed hearing, which shall occur not later than 20 days after adjudication if the child is in detention, to hear evidence as to whether the child is in need of treatment, supervision or rehabilitation and to make and file its findings thereon. In the absence of evidence to the contrary, evidence of the commission of acts which constitute a felony shall be sufficient to sustain a finding that the child is in need of treatment, supervision or rehabilitation. If the court finds that the child is not in need of treatment, supervision or rehabilitation it shall dismiss the

proceeding and discharge the child from any detention or other restriction theretofore ordered.

(c) Finding of dependency.---If the court finds from clear and convincing evidence that the child is dependent, the court shall proceed immediately or at a postponed hearing, which shall occur not later than 20 days after adjudication if the child has been removed from his home, to make a proper disposition of the case.

(d) Evidence on issue of disposition.---In disposition hearings under subsections (b) and (c) all evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition. The parties or their counsel shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making the reports. Sources of information given in confidence need not be disclosed.

(e) Continued hearings.---On its motion or that of a party the court may continue the hearings under this section for a reasonable period to receive reports and other evidence bearing on the disposition or the need for treatment, supervision or rehabilitation. In this event the court shall make an appropriate order for detention of the child or his release from detention subject to supervision of the court during the period of the

continuance. In scheduling investigations and hearings the court shall give priority to proceedings in which a child is in detention or has otherwise been removed from his home before an order of disposition has been made.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KASEEM COLEMAN, et al.,	:	CIVIL ACTION
	:	
v.	:	
	:	
JOSEPH STANZIANI, et al.,	:	NO. 81-2215

O R D E R

AND NOW this 14th day of September, 1983, it is hereby ORDERED that defendants' Motion for Judgment on the Pleadings and/or for Partial Decertification of the plaintiffs' Class be and is DENIED.

BY THE COURT:

Joseph S. Lord, III S. J.

APPENDIX OF STATUTES INVOLVED

28 U.S.C. §1291 states:

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1282(c) and (d) and 1295 of this title.

42 U.S.C. §1983 states:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 Pa. Cons. Stat. Ann. §6301(b) states:

(b) Purposes.--This chapter shall be interpreted and construed as to effectuate the following purposes.

(1) To preserve the unity of the family whenever possible and to provide for the care, protection and wholesome mental and physical development of children coming within the provisions of this chapter.

(2) Consistent with the protection of the public interest, to remove from children committing delinquent acts the consequences of criminal behavior, and to substitute therefor a program of supervision, care and rehabilitation.

(3) To achieve the foregoing purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare or in the interests of public safety.

(4) To provide means through which the provisions of this chapter are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

42 Pa. Cons. Stat. Ann. §6331 states:

Release from detention or commence of proceedings.

If a child is brought before the court or delivered to a detention or shelter care facility designated by the court, the intake or other authorized officer

of the court shall immediately make an investigation and release the child unless it appears that his detention or shelter care is warranted or required under section 6325 (relating to detention of child). [(54a)]. The release of the child shall not prevent the subsequent filing of a petition as provided in this chapter. If he is not so released, a petition shall be promptly made and presented to the court within 24 hours or the next court business day of the admission of the child to detention or shelter care.

42 Pa. Cons. Stat. Ann. §6332(a) states:

Informal hearing.

(a) General rule.--An informal hearing shall be held promptly by the court or master and not later than 72 hours after the child is placed in detention or shelter care to determine whether his detention or shelter care is required under section 6325 (relating to detention of child) [(54a)] and if the child is alleged to be delinquent, that probable cause exists that the child has committed a delinquent act. Reasonable notice thereof, either oral or written, stating the time, place, and purpose of the hearing shall be given to the child and if they can be found, to his parents, guardian, or other custodian. Prior to the commencement of the hearing the court or master shall inform the parties of their right to counsel and to appointed counsel if they are needy persons, and of the right of the child to remain silent with respect to any allegations of delinquency.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-1730

COLEMAN, KASEEM, a minor, by his mother and next friend, DELORES LEE; and MATTOX, AARON, a minor, by his mother and next friend, DORIS MATTOX; WIGGINS, LAWRENCE LEE, and WIGGINS, FREDDIE LEE, minors, by their mother and next friend, BARBARA WIGGINS, on their own behalf and on behalf of all others similarly situated,

Appellees

v.

JOSEPH H. STANZIANI and LAWRENCE A. BROWN, individually and in their official capacities as Judges of the Montgomery County Court of Common Pleas, Juvenile Division, on their own behalf and on behalf of all other Juvenile Court Judges similarly situated in the Commonwealth of Pennsylvania; ANTHONY GUARNA, individually and in his official capacity as Chief Juvenile Probation Officer, Montgomery County, on his own behalf and on behalf of all other juvenile probation officers similarly situated in the Commonwealth of Pennsylvania;

THE MONTGOMERY COUNTY COURT OF COMMON PLEAS, JUVENILE DIVISION; and MONTGOMERY COUNTY, PENNSYLVANIA,

Appellants

(D. C. Docket No. 81-2215)

No. 83-3539

JOSEPH H. STANZIANI and LAWRENCE A. BROWN, individually and in their official capacities as Judges of the Montgomery County Court of Common Pleas, Juvenile Division, on their own behalf and on behalf of all other Juvenile Court Judges similarly situated in the Commonwealth of Pennsylvania;

ANTHONY GUARNA, individually and in his official capacity as Chief Juvenile Probation Officer, Montgomery County, on his own behalf and on behalf of all other juvenile probation officers similarly situated in the Commonwealth of Pennsylvania;

THE MONTGOMERY COUNTY COURT OF COMMON PLEAS, JUVENILE DIVISION;
and
MONTGOMERY COUNTY, PENNSYLVANIA,
Petitioners

v.

HONORABLE JOSEPH S. LORD, III,
Nominal Respondent

KASEEM COLEMAN, a minor, by his mother and next friend, DELORES LEE; AARON MATTOX, a minor, by his mother and next friend, DORIS MATTOX; LAWRENCE LEE WIGGINS and FREDDIE LEE WIGGINS, minors, by their mother and next friend, BARBARA WIGGINS, on their own behalf and on behalf of all others similarly situated,
Actual Respondents

(Petition for Writ of Mandamus or Prohibition)

Nos. 83-1730 & 83-3539

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: GIBBONS and HUNTER, Circuit Judges and STAPLETON, District Judge*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel on May 17, 1984.

On consideration whereof, it is now here ordered and adjudged by this Court that the within appeal at No. 83-1730 be, and the same is hereby dismissed for lack of jurisdiction and the motion to dismiss is thus granted.

---

* Honorable Walter K. Stapleton, United States District Judge for the District of Delaware, sitting by designation.

It is further ordered and adjudged that the petition for writ of mandamus docketed at No. 83-3539 be, and the same is hereby denied. Costs taxed against appellants in No. 831730 and against petitioners in No. 83-3539. All the above in accordance with the opinion of this Court.

ATTEST:

Sally Mrvos/s

Clerk

June 4, 1984

Certified as a true copy and issued in lieu of a formal mandate on June 26, 1984. Test: M. Elizabeth Ferguson/s Chief Deputy Clerk, U.S. Court of Appeals for the Third Circuit COPY

Office - Supreme Court, U.S.
FILED
NOV 5 1984
ALEXANDER L. STEVAS,
CLERK

No. 84-552

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

JOSEPH H. STANZIANI, et al.,
Petitioners

v.

KASEEM COLEMAN, et al.,
Respondents

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
Table of Contents.....	i
Table of Authorities.....	iii
REASONS WHY THE WRIT SHOULD BE DENIED.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	4
I. THE WRIT MUST BE DENIED BECAUSE THE DISMISSAL BY THE COURT OF APPEALS OF THE INTERLOCUTORY APPEAL WAS REQUIRED BY PRIOR DECISIONS OF THIS COURT.....	4
A. Petitioners' claims are reviewable on appeal after final judgment.....	5
B. This case should not be treated differently than others in which this Court has refused to make ad hoc exceptions to the final judgment rule.....	9
C. This is a particularly inappropriate case to consider for an exception to the final judgment rule.....	11

Page

II. THE DECISION OF THE COURT OF APPEALS DISMISSING PETITIONERS' APPEAL IS NOT IN CONFLICT WITH ANY DECISION OF ANOTHER FEDERAL COURT OF APPEALS OR OF THE SUPREME COURT OF PENNSYLVANIA..... 17

III. ASSUMING ARGUENDO THAT THIS COURT GRANTS CERTIORARI ON THE ISSUE OF THE FINAL JUDGMENT RULE, CERTIORARI SHOULD NOT BE GRANTED ON PROPRIETY OF THE DISTRICT COURT'S DENIAL OF PETITIONERS' MOTION FOR JUDGMENT ON THE PLEADINGS..... 20

A. Certiorari should not be granted to review questions not decided below..... 21

B. The decision of the district court was based upon its exercise of discretion and its specific factual findings and does not merit the attention of this Court..... 23

CONCLUSION..... 27

TABLE OF AUTHORITIES

Cases	Page
Abney v. U.S., 431 U.S. 651 (1977).....	19
Burford v. Sun Oil Co., 319 U.S. 315 (1943).....	2,24
Carroll v. United States, 354 U.S. 394 (1957).....	9,10
Central States, Southeast and Southwest Areas Health and Welfare Fund v. Old Security Life Insurance Co., 600 F.2d 671 (7th Cir. 1979)..	18
Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949).....	4,5,16
Coopers & Lybrand v. Livesay, 437 U.S. 463 (1978).....	5
DiBella v. U.S., 369 U.S. 121 (1962).....	19
Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368 (1981).....	5
Galvan v. Garmon, 710 F.2d 214 (5th Cir. 1983).	7
Gerstein v. Pugh, 420 U.S. 103 (1975).....	13

	Page
Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964).....	14
Harlow v. Fitzgerald, 457 U.S. 800 (1982).....	6
J. Truett Payne Co. v. Chrysler Motor Corp., 451 U.S. 557 (1981).....	21
Mayor of Philadelphia v. Educational Equity League, 415 U.S. 605 (1974).....	14
Nixon v. Fitzgerald, 457 U.S. 731 (1982).....	19,22
Pulliam v. Allen, 104 S.Ct. 1970 (1984).....	6
Railroad Commission of Texas v. Pullman Co., 312 U.S. 496 (1941).....	2,24
Ray v. Pickett, 734 F.2d 370 (8th Cir. 1984).	7
Switzerland Cheese Association, Inc. v. E. Horne's Market, Inc., 385 U.S. 23 (1966).....	19
Thompson v. Burke, 556 F.2d 231 (3d Cir. 1977)..	7

	Page
United States v. Continental Tuna Corp., 425 U.S. 164 (1976).....	22
United States v. Hollywood Motor Car Co. 458 U.S. 263 (1982).....	10,19
United States v. MacDonald, 435 U.S. 850 (1978).....	9,10,17,19
Wolfel v. Sanborn, 691 F.2d 270 (6th Cir. 1982), cert. denied, __U.S.__, 103 S.Ct. 751 (1983).....	7
Wood v. Strickland, 420 U.S. 308 (1975).....	22
Younger v. Harris, 401 U.S. 37 (1971).....	2,16,24,25

STATUTES

28 U.S.C.	Sec. 1291.....	2,20
	Sec. 1292.....	12

RULES

Fed. R. Civ. Proc. 12(c).....	1,5,16
U.S. Sup.Ct. Rules 17.1(a)...	19

No. 84-552

In The Supreme Court
of the United States

October Term, 1984

Joseph H. Stanziani, et al.,

Petitioners

v.

Kaseem Coleman, et al.,

Respondents

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

REASONS WHY THE WRIT SHOULD BE DENIED

Over two years after the commencement of this action and prior to trial, petitioners moved in the district court for judgment on the pleadings under Fed. R. Civ. P. 12(c) based on a trio of

abstention doctrines: Younger v. Harris, 401 U.S. 37 (1971); Railroad Commission v. Pullman Co., 312 U.S. 496 (1941); or Burford v. Sun Oil Co., 319 U.S. 315 (1943).

The district court denied the motion for judgment on the pleadings (Appendix 12a) and petitioners filed an interlocutory appeal. After briefing and oral argument and a nine month delay in the proceedings, the Court of Appeals for the Third Circuit dismissed petitioners' appeal as interlocutory and not taken from a final judgment within the meaning of 28 U.S.C. §1291. (Appendix 63a). Petitioners now seek certiorari from this order.

SUMMARY OF ARGUMENT

This petition for writ of certiorari should be denied because the dismissal of

the appeal by the Court of Appeals was required by prior decisions of this Court applying the final judgment rule and is not in conflict with any judicial ruling. This case presents no new issues of law. A denial of a motion for judgment on the pleadings is the classic example of a nonappealable interlocutory order. In addition, the order in this particular case does not warrant the attention of this Court because petitioners' claim that this case warrants extraordinary relief has no basis in the record.

The petitioners' request for grant of certiorari on the merits of the district court's order must also be denied both because the Court of Appeals did not address that issue and because the decision of the district court was not erroneous and was premised upon an exercise of discretion and findings of

fact.

ARGUMENT

I. The writ must be denied because the dismissal by the Court of Appeals of the interlocutory appeal was required by prior decisions of this Court.

The decision of the Court of Appeals dismissing petitioners' interlocutory appeal was required by prior decisions of this Court which have applied the final judgment rule and the collateral order doctrine set forth in Cohen v. Beneficial Industrial Loan Corporation, 337 U.S. 541 (1949). Under Cohen, in order to qualify as a final collateral order, "the order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from final

judgment." Firestone Tire and Rubber Co. v Risjord, 449 U.S. 368, 375 (1981), quoting Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (1978).

As the Court of Appeals found, the order denying petitioners' Rule 12(c) motion for judgment on the pleadings satisfied none of the three Cohen criteria. (Appendix 8a). The most critical and glaring absence is that of the third component-- abstention claims have always been and remain capable of review after final judgment. This case is no different.

A. Petitioners' claims are reviewable on appeal after final judgment.

In order to justify their claim of unreviewability, petitioners create for themselves a "right" not to undergo a trial in federal court. Defendants in

this action, however, unlike those in cases cited by petitioners, have no immunity from participating in a trial when plaintiffs allege their conduct to be unconstitutional and seek injunctive relief. In effect, what petitioners attempt to do by asserting a right to avoid trial is overturn the line of cases ending in Pulliam v. Allen, 104 S.Ct. 1970 (1984), holding that judicial officers are not immune from suit for injunctive relief. This case thus presents nothing new.

Moreover, petitioners' categorization of themselves as "judicial authorities" is misleading. In fact, the primary defendants are probation officers who are entitled only to a qualified immunity even from a damage action under the "functional" approach to immunity law articulated by this Court in Harlow v.

Fitzgerald, 457 U.S. 800, 810 (1982). See, Ray v. Pickett, 734 F.2d 370, 372 (8th Cir. 1984); Galvon v. Garmon, 710 F.2d 214, 215 (5th Cir. 1983); Wolfel v. Sanborn, 691 F.2d 270, 271 (6th Cir. 1982), cert. denied, ___U.S.___, 103 S.Ct. 751 (1983). See also, Thompson v. Burke, 556 F.2d 231 (3d Cir. 1977).

Petitioners' argument that the denial of their motion for judgment on the pleadings is unreviewable on appeal deliberately confuses the question of what is a final judgment with the particular facts and claims set forth within that motion. For example, petitioners' dire warnings and the ritualistic repetition of the words "comity" and "federalism," intended to appeal to this Court's sensitivity to the relationship between federal and state judiciaries, are really an effort to

reargue the merits of the abstention claims. Petitioners' assertions, however, do not support an abrogation of the final judgment rule. There will obviously be no injunctive relief against state judicial officers or payment of attorneys' fees until and unless plaintiffs prevail at trial and that final judgment -- as well as the district court's decision not to abstain -- are upheld on appeal.

Petitioners' further argument to this Court that review must be made at this stage because of the possibility that some defendant might be cited for contempt is also, to say the least, premature. Petitioners conjure up a "worst-case" scenario that has no basis in reality. Indeed, all of petitioners' arguments ignore one of the underlying premises of the final judgment rule: the

lower courts may find that the challenged statute and the challenged practices are constitutional. Consideration of this case at this time is premature and unnecessary.

B. This case should not be treated differently than others in which this Court has refused to make ad hoc exceptions to the final judgment rule.

This case is no different than the scores of others that have preceded it in which abstention claims have been raised. As this Court stated in U.S. v. MacDonald, supra:

> "Appeal rights cannot depend on the facts of the particular case." Carroll v. United States, 354 U.S. 394, 405 (1957). The factual circumstances that underlie a speedy trial claim, however "extraordinary," cannot establish its independent appealability prior to trial. Under the controlling jurisdictional statute ..., the federal courts of appeals have power to review only "final decisions," a concept that Congress defined "in terms of categories."

Carroll v. United States, 354 U.S. at 405.

Id., 435 U.S. at 857 fn. 6.

Just as a particularly sympathetic speedy trial claim, U.S. v. MacDonald, supra, or a particularly egregious case of vindictive prosecution, U.S. v. Hollywood Motor Car Co., 458 U.S. 263 (1982), will not warrant the creation of a further exception to the final judgment rule, the claim that this motion for judgment on the pleadings is really a case where abstention is appropriate cannot justify upsetting orderly judicial process and introducing uncertainty into an area of law where certainty has existed before. The reliance on particular facts of particular cases rather than on categories of cases will simply encourage litigants to seek to fit their individual cases within the strictures of this new exception and

result in the disruption of dockets of both the trial courts and courts of appeals.

C. This is a particularly inappropriate case to consider for an exception to the final judgment rule.

Even if further exceptions to the final judgment rule were warranted, this is a most inappropriate case for such an exception.

First, there is no evidence of record to support petitioners' assertions about the drastic effect of this case on the state judiciary. Petitioners could have built a record on this issue but did not. They failed to file a motion with the district court to certify the question as a controlling question of law with respect to which there is a

substantial ground for difference of opinion under 28 U.S.C. §1292(b). If petitioners had filed such a motion, they could have supported with evidence their assertions of dire consequences to the state system. Instead, petitioners, without any record, now rely on bald assertions that the mere existence of this lawsuit, unlike others, undermines the "dignity and integrity and public trust in the state judicial system." (Petition for Certiorari, p. 20) Even assuming that these assertions had some basis in reality, any alleged erosion of public trust can be adequately addressed on appeal after final judgment.

Petitioners' additional complaints, such as their assertion that the burdens of discovery require their interlocutory appeal be heard, are without basis. Defendants filed no

timely objections to any discovery sought and have failed to answer even one interrogatory. (And, of course, if the district court abstained, defendants would still be subject to discovery in any separate state court proceeding).

Second, petitioners do not argue-- nor could they on this record-- that there will be an actual interruption of state proceedings here, even after a final order is entered. Plaintiffs do not seek intervention in any ongoing juvenile case as the cases of the named plaintiffs came to an end soon after the complaint was filed. As in Gerstein v. Pugh, 420 U.S. 103 (1975), state proceedings continue without interference because of the collateral nature of plaintiffs' constitutional challenge.

Third, petitioners' motion for judgment on the pleadings was denied in

part because of petitioners' inexcusable delay in waiting to file the motion until the eve of trial. The discretionary denial of their motion on this ground hardly merits the attention of this Court. See, Mayor of City of Philadelphia v. Educational Equality League, 415 U.S. 605 (1974); Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964).

Fourth, petitioners argue not with the analytical framework applied by the district court in addressing their abstention claims, but rather with the court's exercise of discretion and with its detailed findings concerning the adequacy of state court remedies. This case thus presents no important question of law warranting this Court's attention but rather only a request to review the application of already settled standards

to a particular factual situation.

Last, as explained above, defendants below include more than judges. In fact, the primary defendants are probation officers who detain children without a hearing, and a county (a political subdivision). Whether plaintiffs will be successful in their claims against the judges and, if so, whether the relief granted will be intrusive, has obviously not yet been decided. The consideration of these matters may prove to be unnecessary if this case is permitted to proceed in an orderly fashion to final judgment. Moreover, plaintiffs seek not only injunctive relief, but also a damage award against the non-judicial defendants. Petitioners' arguments ignore the fact that a major portion of the district court's ruling addressed relief sought from only these non-

judicial defendants.

The convergence of all these factors with the fact that petitioners rely on three alternative grounds for abstention makes impossible the task of deciphering precisely what exception to the Cohen rule petitioners seek. Is it, perhaps, that all denials of Rule 12(c) motions are final orders, or is it only when the motion is based on Younger abstention, or is it only when all three grounds for abstention are raised? Is it when a Rule 12(c) motion is made in a case where there are some judicial defendants? Is it when the claims involve state court proceedings, or does it extend to challenges to administrative actions as well?

This case is thus an inappropriate vehicle for re-examining the final judgment rule; the ambiguity of

petitioners' claims could open the floodgates to piecemeal interlocutory appeals. There simply will be no end to the possible permutations unless this Court continues to hold, as it did in U.S. v. MacDonald, supra, that the final judgment rule is a rule, and not a balancing test to be applied to the individual facts of every case.

Both the judicial precedent set by this Court, requiring the application of the final judgment rule by category of case rather than by individual facts, and the individual facts of this case compel denial of certiorari.

II. The decision of the Court of Appeals dismissing petitioners' appeal is not in conflict with any decision of another federal court of appeals or of the Supreme Court of Pennsylvania.

Petitioners cite to this Court no case from any federal court of appeals or

from the Supreme Court of Pennsylvania which conflicts with the order dismissing petitioners' appeal as interlocutory. While petitioners repeatedly confuse the question of what constitutes a final order with the substance of the abstention issues that were before the district court, there is no dispute that the dismissal of petitioners' interlocutory appeal by the Court of Appeals is not in conflict with any judicial authority. The only other case

on point at any level of the judiciary, state or federal, is in accord with the decision in this case. Central States, Southeast and Southwest Areas Health and Welfare Fund v. Old Security Life Insurance Co., 600 F. 2d 671 (7th Cir. 1979) (holding denial of motion to dismiss based on abstention was

nonappealable interlocutory order).

There is thus no authority under Rule 17.1(a) of the U.S. Sup. Ct. Rules, 28 U.S.C.A., for review of this case by writ of certiorari. When certiorari has been granted to review issues of finality, there has existed a conflict among the Circuits which served to elucidate the issue and which required resolution by this Court. See, e.g., U.S. v. Hollywood Motor Car, 458 U.S. 263, 264 fn. 1 (1982); U.S. v. MacDonald, 435 U.S. 850, 857 (1978); Abney v. U.S., 431 U.S. 651, 657 (1977); Switzerland Cheese Association, Inc. v. E. Horne's Market, Inc., 385 U.S. 23, 24 (1966); DiBella v. U.S., 369 U.S. 121, 123 (1962). Cf., Nixon v. Fitzgerald, 457 U.S. 731 (1982) (certiorari granted absent a dispute among the Circuits to resolve issue of major public importance such as question

of immunity of ex-President of the United States).

III. Assuming arguendo that this Court grants certiorari on the issue of the final judgment rule, certiorari should not be granted on the propriety of the district court's denial of petitioners' motion for judgment on the pleadings.

The Court of Appeals did not address the issue of the propriety of the district court's refusal to exercise its discretionary power to abstain from hearing this case. The reasoning of the Court of Appeals was, as set forth in respondents' argument above, that since the district court's order was neither final nor within the collateral order exception of 28 U.S.C. §1291, it simply was not appealable. Nevertheless, the petitioners now seek from this Court a ruling on the merits of their abstention arguments. Respondents assert that,

in addition to the nonappealability of the abstention issue prior to trial, it would not be proper for this Court to address the propriety of the district court's action at this time because the issue was not reached by the Court of Appeals. In the alternative, if this Court undertakes such a substantive review, respondents assert that the district court's retention of jurisdiction and refusal to abstain was well within that court's discretionary power and does not merit the attention of this Court.

A. Certiorari should not be granted to review questions not decided below.

A writ of certiorari should not be granted to review a question which has been passed over or otherwise not addressed by the Court of Appeals. J.

Truett Payne Co. v. Chrysler Motor Corp., 451 U.S. 557, 568 (1981); U.S. v. United Continental Tuna Corp. 425 U.S. 164, 181-182 (1976); Wood v. Strickland, 420 U.S. 308, 326-327 (1975). If this Court finds that the Court of Appeals was in error regarding the nonappealability of the district court order, it should then remand the case to the Court of Appeals for its consideration of the merits of the abstention issue. Contrary to the assertions of the petitioners in relying upon the footnote in Nixon v. Fitzgerald, 457 U.S. 731, 743 fn.23 (1982), the exercise of a federal court's discretionary power to abstain is not a pure question of law (Petition for Certiorari, p.31); a discretionary decision by definition turns upon the peculiar facts and circumstances of each individual case. This Court presently

has before it the detailed findings of the district court regarding the abstention decision. (Appendix 29a-53a). The Court of Appeals has not spoken on this matter, however, and this Court is therefore without the benefit of the Third Circuit's analysis of the issue. If this Court determines that review of the Court of Appeals decision is warranted, certiorari should be granted only on those issues decided by that court.

B. The decision of the district court was based upon its exercise of discretion and its specific factual findings and does not merit the attention of this Court.

Petitioners sought judgment on the pleadings in this action, claiming that the federal court was barred from adjudicating plaintiffs' claims because

of the doctrine of abstention as set forth in either Younger v. Harris, 401 U.S. 37 (1971), Railroad Commission of Texas v. Pullman Co., 312 U.S. 496 (1941), or Burford v. Sun Oil Co., 319 U.S. 315 (1943). While petitioners assert for the first time here an abstention theory based on an amalgam of the three abstention doctrines, (Petition for Certiorari, p.31), respondents address in main only the propriety of the district court's Younger holding. As stated above, Pullman abstention was rejected at least in part because the district court found petitioners' two-year delay in filing their motion to be inexcusable and to cause an unwarranted delay in disposition. (Appendix 51a). The district court also refused to exercise its discretion under Burford because of the predominance of federal

constitutional issues and the lack of any specialized state regulatory agency entrusted to handle the state law issues, even if any such issues existed. (Appendix 51a-53a).

With regard to Younger abstention, the district court first held that the doctrine did not bar the damage action against only nonjudicial entities by the named plaintiffs whose individual state court proceedings had ended years ago. (Appendix 37a). Concerning the request for injunctive relief, the district court carefully followed the rulings of this Court holding that abstention is required only if state court proceedings afford plaintiffs an adequate opportunity to raise their constitutional claims. (Appendix 29a-34a). The district court addressed step by step the potentially available

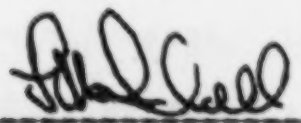
state court proceedings and the state judicial rulings interpreting those proceedings. The court found as to each stage that state remedies did not present an adequate opportunity in which to raise plaintiffs' constitutional claims. (Appendix 38a-47a).

Petitioners' request for writ of certiorari on the substance of the district court's holding is not based on the ground that the district court applied an incorrect legal standard. Rather, petitioners object to the court's exercise of discretion and its factual determinations concerning the available state procedures. This case thus presents no important issue of law worthy of this Court's attention.

CONCLUSION

No issue presented in this petition for writ of certiorari warrants the attention of this Court at this stage of the proceedings. The denial of the motion for judgment on the pleadings is clearly a nonappealable interlocutory order. No defendant in this action is immune from participation in a trial seeking injunctive relief and the question of whether abstention is required can be addressed adequately on appeal after final judgment. In addition, because the decision of the district court denying petitioners' motion was not reviewed by the Court of Appeals and strictly adhered to this Court's rulings on abstention, review of its order by writ of certiorari should be denied.

Respectfully submitted,



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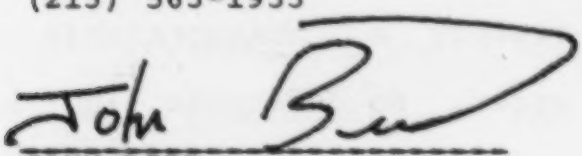

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